In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Appeal No.1953-SB of 2002

.....

Date of decision:2.5.2007

Mewa Singh and another

.....Appellants

v.

State of Haryana

.....Respondent

....

(2) Criminal Appeal No.158-SB of 2003

.....

Krishan Singh

.....Appellant

v.

State of Haryana

.....Respondent

....

Present: Mr. Narender Hooda, Advocate for appellant No.1 Mewa Singh in Criminal Appeal No.1953-SB of 2002.

Mr. G.S. Sidhu, Advocate for appellant No.2 Meeta Singh in Criminal Appeal No.1953-SB of 2002 and appellant Krishan Singh in Criminal Appeal No.158-SB of 2003.

Mr. Narinder Sura, Assistant Advocate General, Haryana for the respondent-State.

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S.S. Saron, J. (Oral)

This order will dispose of Criminal Appeal No.1953-SB of 2002 filed by Mewa Singh and Meeta Singh and Criminal Appeal No.158-SB of 2003 filed by Krishan Singh as they both arise out of the same judgment and order dated 13.11.2002 passed by the learned Additional

Sessions Judge, Sirsa whereby the above two sets of appellants have been convicted for the offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (`NDPS Act' – for short) and sentenced to undergo rigorous imprisonment for ten years and fine of Rs.1 Lac. In default of payment of fine, the appellants are to further undergo rigorous imprisonment for a period of two years.

Case FIR No.189 dated 28.7.1998 (Ex.PH/1) was registered for the offence under Section 15 of the NDPS Act at Police Station Sadar Dabwali. According to the FIR on the date of occurrence i.e. 28.7.1998 Chander Bhan SI/SHO Police Station Sadar Dabwali (PW-4) along with ASI Umed Singh (PW-3) and other police officials in Government jeep No.HR 24D-0983 driven by Ram Chander Constable No.943 were present at the GT Road at T-Point Kingre Maur in connection with patrolling and detecting crime. A jeep was seen coming along the canal bank from the side of Kingre, the number of which later came to be revealed as HR 23A-2765. When it reached near GT road it was stopped. On seeing the police party, the driver of the said jeep started reversing to go back along the track. On suspicion, the jeep was apprehended with the help of the police officials accompanying SI Chander Bhan. Three persons were travelling in the jeep. The driver disclosed his identity as Mewa Singh (appellant No.1 in Criminal Appeal No.1953-SB of 2002). The person sitting on the rear side of the jeep disclosed his name as Krishan Singh (appellant in Criminal Appeal No.158-SB of 2003) and the person sitting on the left side disclosed his name as Meeta Singh (appellant No.2 in Criminal Appeal No.1953-SB of 2002). Two gunny bags were found in the jeep. A notice under Section 50 of the NDPS Act was served on each of the three accused. It was to the

effect that there was poppy straw or narcotic substance in the gunny bags that had been kept in the jeep which was to be searched. The appellants were asked if they desired to be searched before any Gazetted Officer or Illaqa Magistrate who could be called at the spot for their search and they could be produced before him. The appellants declined and as per their reply they expressed that they did not want to call any gazetted officer or Magistrate. They reposed confidence in SI Chander Bhan, SHO (PW-4). A search of the gunny bags was conducted and poppy straw was found to be contained therein. After separating a sample of 100 grams of poppy straw from each gunny bag, the weight of each bag was found to be 39 Kg. 900 grams. Samples of poppy straw and the recovered bags were converted into parcels separately and sealed with the seal of `CB'. Seal after its use was handed over to ASI Umed Singh. The sample parcels, bags and jeep No.HR 23A-2765 were taken in police possession in pursuance of the memo that was prepared and signed by the Investigating Officer. The appellants in this manner, it was alleged, by keeping 80 Kgs. of poppy straw in their possession had committed an offence punishable under Section 15 of the NDPS Act. A writing to this effect was sent to the Police Station through Bilasa Ram Constable No.365 for registration of a case. It was requested that after registration of the case the number thereof may be intimated. On receipt of the writing at the Police Station FIR was registered. Copy of the Police file along with original writing was sent to the Investigating Officer at the spot. The Police carried out investigation in the case and the challan in terms of Section 173 of the Code of Criminal Procedure (`Cr.P.C.' - for short) was presented in the Court of Sessions Judge, Sirsa on 7.1.1999. The

leaned Sessions Judge on 27.2.1999 charged the appellants on the allegations that they all on or about 28.7.1998 in the area of Village Kingre had kept in their conscious possession 80 Kgs. `Chura Post' contained in two gunny bags which they were carrying in jeep No.HR 23A – 2765 without any licence, permit or authority and that they thereby committed an offence punishable under Section 15 of the NDPS Act. The appellants pleaded not guilty to the charge and claimed trial. The prosecution in order to prove its case examined Manphool Singh HC No.712 (PW-1), Bhoop Singh Constable No.256 (PW-2), Umed Singh ASI (PW-3), Chander Bhan SI/SHO (PW-4) and the prosecution evidence was closed. The statements of the appellants in terms of Section 313 Cr.P.C. were recorded and the evidence appearing against them was put to them. Mewa Singh appellant submitted that he was innocent and nothing was recovered from him. His father's sister is married at Village Abub Shahar. There was political rivalry between one Mangtu and the family of his father's sister. Mangtu was an active member of the Haryana Vikas Party and he was also a member of the Grievances Committee. Therefore, he alongwith Krishan Kumar was falsely implicated in this case at the instance of Mangtu. Krishan Singh appellant also stated that he was innocent and nothing was recovered from him. He was falsely implicated in the case at the instance of Mangtu of Village Abub Shahar because he was a relative of the accused Mewa Singh. Meeta Singh appellant in his statement under Section 313 Cr.P.C. stated that he was innocent and nothing was recovered from him. He was falsely implicated in this case at the instance of Gurbaksh Singh, Sarpanch of Village Mithri due to party faction in the village. The present recovery, it

was stated, was the result of plantation upon them. In defence, Gharsa Ram HC No.551 was examined as DW-1. Thereafter the evidence of the defence was closed. The learned Additional Additional Sessions Judge vide his impugned judgment and order, as already noticed, convicted and sentenced the appellants for the offence under Section 15 of the NDPS Act. The said order of conviction and sentence is assailed in the present appeals.

Shri Narender Hooda, Advocate appearing for the appellant Mewa Singh and Shri G.S. Sidhu, Advocate appearing for the appellants Meeta Singh and Krishan Singh have contended that the case is absolutely false and the evidence that had been produced on record is highly discrepant and untrustworthy. It is submitted that no reliance can be placed on the said evidence. Besides, reference has been made to the discrepancies that are there in the statements of Umed Singh ASI (PW-3) and Chander Bhan SI (PW-4). It is submitted that the said discrepancies go to the root of the case which warrant the acquittal of the appellants. It is also submitted that no independent witness has been examined. Besides, the sample seals in the case were not deposited in the `Malkhana' which would give an opportunity to the prosecution to tamper with the samples. Even otherwise the sample seals are not decipherable which is evident from the evidence that has been produced during the trial. Mr. G.S. Sidhu, Advocate appearing for the appellants Meeta Singh and Krishan Singh has further submitted that the said appellants Meeta Singh and Krishan Singh in any case were only sitting in the jeep and they were neither the owner nor the driver of the jeep. Therefore, it cannot be said that they were in conscious possession of the contraband. It is submitted that no question regarding exclusive possession of the contraband was put to the appellants Meeta

Singh and Krishan Singh.

In response, Shri Narinder Sura, learned Assistant Advocate General, Haryana has submitted that the prosecution has proved its case against the appellants in all material aspects. The discrepancies pointed out by the learned counsel for the appellants, it is submitted, are minor in nature which normally occur in all trials. It is further stated that the said discrepancies do not, in any case, go to the root of the matter which would warrant the acquittal of the appellants by setting aside the impugned judgment and order. It is further submitted that the FSL report (Ex.PA) specifically mentions that the sample seals tallied with the seals on the samples.

I have given my thoughtful consideration to the contentions of the learned counsel for the parties and with their assistance gone through the record of the case. A perusal of the statements on record would show that there are indeed discrepancies in the statements of the prosecution witnesses. The case primarily hinges on the statements of ASI Umed Singh (PW-3) and SI Chander Bhan (PW-4). Both are police officials and have deposed in the case. They have supported the prosecution case as recorded in the FIR (Ex.PH/1). However, it may be noticed that ASI Umed Singh (PW-3) in his cross-examination states that there were seven seals affixed on each bag Ex.P.1 and Ex.P.2. Out of the seven seals three seals were lying broken on each bag. Besides, all the seals were not visible. On the second bag (Ex.P2) two seals from the corner side were broken. The other seals were intact but could not be read. It may be noticed that, in fact, on the two bags six seals were put which find a mention in the statement of Manphool Singh HC No.712 (PW-1), who was MHC of Police Station

Sadar Dabwali. In his cross-examination it is stated that the case property was deposited with him by the SHO at about 9.30 p.m. on 28.7.1998. Each of the two samples contained four seals. The residue parcels contained six seals each. Therefore, it is not understood how seven seals came to be there on the bags Exs.P.1 and P.2 as deposed by ASI Umed Singh (PW-3). Besides, it is accepted by him that three of the seals were broken and the remaining seals were not visible which would mean that they were not decipherable. In Sarabjit Singh alias Sarba v. State of Punjab, 1998 (1) RCR (Cr.) 348 (P&H) this Court relying on an earlier judgment in Surjit Singh v. The State of Punjab, 1997 (3) RCR (Cr.) 351 held that if the seals on the contraband are not decipherable at the time when the case property is produced in Court then the possibility of the case property being tampered with cannot be ruled out and the benefit of doubt should be given to the accused. In the present case admittedly sample seals are not decipherable.

It may further be noticed that ASI Umed Singh (PW-3) in his deposition stated that they had received secret information about the accused indulging in the smuggling of `chura post'. However, SI Chander Bhan (PW-4) states that he had no secret information about the accused indulging in smuggling activities. Further ASI Umed Singh (PW-3) in his cross-examination states that some writings of the investigation was done by him and some was done by the Sub Inspector whereas SI Chander Bhan (PW-4) states that all the writing was done by ASI Umed Singh (PW-3). Even with regard to the weights which were used for weighing the contraband, ASI Umed Singh (PW-3) states that the weights were 20, 50, 100 and 200 grams. However, SI Chander Bhan (PW-4) in his deposition

states that the weighing scale was like a watch and there were no weights. It may also be noticed that ASI Umed Singh (PW-3) states that he returned the seal i.e. the seal which was put on the contraband to the Investigating Officer on the next day in the police station whereas SI Chander Bhan (PW-4) states that the seal was returned to him after about 15 days of the occurrence. ASI Umed Singh (PW-3) has stated that he did not send anybody to call a person for joining as an independent witness. However, SI Chander Bhan (PW-4) has stated that he had sent a constable to fetch some independent witness after stopping some vehicles. ASI Umed Singh (PW-3) has stated in his cross-examination that water was not flowing in the canal whereas SI Chander Bhan (PW-4) has stated otherwise that water was flowing in the canal.

Great emphasis during the course of hearing has been made with respect to the sample seals. Although in the report (Ex.PA) under the heading “Nature of seals” it is certified by Sh. S.K. Nagpal, Senior Scientific Officer (General)-cum-Ex-officio Assistant Chemical Examiner to Government of Haryana, Forensic Science Laboratory, Madhuban, Karnal that the seals on the parcels were found intact and tallied with the specimen seal as per forwarding authority. However, the evidence on the record is otherwise. MHC Manphool Singh (PW-1) in his affidavit dated 28.5.1999 (Ex.PB) has stated that on 28.7.1998 two parcels of the case property and samples of `chura post' weighing 100 grams each duly sealed by seals `CB' were given to him for deposit in the `Malkhana'. A careful perusal of the affidavit (Ex.PB) which is in vernacular shows that the words “along with sample seals” have been added later. In his cross-examination Manphool Singh HC (PW-1) states that he had not stated in his statement to

the Investigating Officer that the sample impression of the seal used were also deposited with him along with the case property. Therefore, evidently the prosecution has tried to cover up the deposit of sample seals with the MHC at a later point of time. The deposit of the sample seals has been added in the affidavit Ex.PB at a later point of time. The place where the sample seals were kept after the contraband had been seized is not clear. As has already been noticed, ASI Umed Singh (PW-3) stated that he handed over the seal to SI Chander Bhan (PW-4) on the very next day i.e. on 29.7.1998. However, SI Chander Bhan (PW-4) has stated that the seal was given to him by ASI Umed Singh (PW-3) after about 15 days. However, there is no mention with regard to the deposit of the sample seal with the MHC. In the circumstances, the seal and the sample seal being intact and in one place after the recovery is not established. Evidently the seal of the sample is not shown to be deposited in the `Malkhana' along with the seized articles. In the case of Remgul alias Remulal v. State of M.P., 2002 (3) RCR (Cr.) 103 (MP) such a circumstance has been held to be fatal to the prosecution. It was observed that by sending sample with the sample seal to the FSL one packet of sample and seal on sample must remain in the `Malkhana' and the same should have been deposited in the Court at the time of filing charge-sheet. Failure to follow this practice was held to be fatal to the case of the prosecution. Reliance was placed on the case of State of Rajasthan v. Daulatram, AIR 1980 SC 1314 wherein the Supreme Court has observed as follows:-

> "Non-examination of witness in whose possession the sample remained, would be fatal to the prosecution. The inevitable fact of omission was that the prosecution failed to rule the

possibility of the samples to be changed or tampered with during the period in question."

Therefore, the prosecution having failed to show whether the sample seal was deposited in the `Malkhana' or not and, in any case, there being discrepant evidence on record in this regard casts a doubt in the case of the prosecution.

Another aspect in the facts and circumstances which requires to be noticed is that no independent witness was joined in the prosecution case. Though it is correct that merely because prosecution case is based on the evidence of official witnesses would not by itself make the prosecution case doubtful. However, when there are certain discrepancies the examination of independent witnesses would be necessary. In fact, the discrepancies which have been brought out in the present case are that ASI Umed Singh (PW-3) had stated that he did not send any person to fetch an independent witness from the bus stand, whereas SI Chander Bhan (PW-4) has stated that a constable was sent to fetch an independent witness by stopping some vehicles. As to whether any sincere efforts were made to join an independent witness is not forthcoming in the statements of ASI Umed Singh (PW-3) or SI Chander Bhan (PW-4). Therefore, non-examination of any independent witness in the facts and circumstances of the present case also casts a doubt in the case of the prosecution.

Keeping in view the discrepancies on record of the prosecution case the additional plea raised by Shri G.S. Sidhu, learned counsel appearing for Meeta Singh and Krishan Singh appellants need not to be gone into.

For the foregoing reasons the appeals are allowed and the

judgment and order under appeals is set aside and the appellants in both the appeals are acquitted of the offence.

May 2, 2007. **(S.S. Saron)**
Judge

hsp